IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

Dhagla Ram **Versus** Chouth Ram

S.B. CIVIL REVISION PETITION NO.84/04

DATE OF ORDER : 11/10/2006

**Hon'ble Shri Justice Ajay Rastogi**

Shri J.P. Gupta, for petitioner
Shri Mahendra Goyal, for respondent

BY THE COURT:

With the consent of parties, this revision petition is finally disposed of at the stage of admission.

Instant revision petition has been filed by the plaintiff-decree-holder against the order dated 24th March, 2004 whereby application filed by plaintiff-petitioner under O.21 R.22 was rejected by the learned Executing Court.

The plaintiff-petitioner filed a suit for recovery of Rs.34,100/- against the non-petitioner, but later on the suit was transferred to Civil Judge [Sr.Div.], Jaitaran for its adjudication. A registered notice was sent to the respondent, but the same received on 12.01.1993 with an endorsement that the respondent refused to take the summons, as such presumption was drawn for sufficient service on respondent and ex-parte proceedings were initiated against him. After hearing counsel for petitioner, the learned trial Judge decreed the suit against the respondent for Rs.34,100/- with simple interest @10% vide judgment and decree dted 22.01.1997. Petitioner, thereafter, moved application before the Court for issue of transfer certificate since the respondent was not the local resident of the court

by which the judgment and decree was passed. The said application was allowed and the matter was transferred to Civil Judge [Sr.Div.], Beawar for recovery of sum of Rs.68,651/-. On 6th September, 2001, application was filed by the respondent under O.9 R.13 read with Section 151 CPC for setting aside the ex-parte decree, which was dismissed by the learned trial Judge on 21st January, 1983.

Learned Executing Court issued notice to the respondent-judgment debtor under O.21 R.22. Reply to the notice was filed by the respondent and an objection was raised since the amount of interest is higher than principal amount, the decree-holder will not be entitled for the amount of interest as referred to in the decree. The judgment-debtor is a member of Scheduled Caste category, therefore, the suit itself filed against him was not maintainable and prayed for dismissal of execution proceedings. Learned Executing Court accepted the objection raised by the judgment-debtor and held that suit filed against him was not maintainable and therefore, the judgment and decree cannot be executed under the order impugned dated 24th March, 2004.

Counsel for petitioner submits that there was no such application filed u/s.5 of the Act, 1957. In the absence whereof, the very finding, which has been recorded by the learned Executing Court in rejecting his execution application under order impugned dated 26th March, 2004, is not legally sustainable.

Counsel for respondent, on the other hand, does not dispute so far as factual position is concerned about non-filing of application u/s.5 of the Act, 1957. Counsel further submits that since the provision of the Act, 1957 applies, even if such application has not been filed, the Court can always take cognizance of the

provision of the Act, 1957 and the judgment-debtor being member of Scheduled Caste category is entitled for benefit under the provision of the Act and accordingly, the finding, which has been recorded under the order impugned, does not require interference by this Hon'ble Court.

I have considered the submissions of both the counsel and perused the finding recorded under the order impugned.

Undiputedly, the judgment-debtor has not filed any application u/s.5 of Rajasthan Relief Agricultural Indebtedness Act, 1957. In the absence whereof, the very finding recorded by the learned Executing Court on the premise of Section 2A of the Act, 1957 is not sustainable and deserves to be set aside.

Consequently, the revision petition stands allowed. The impugned order dated 24th March, 2004 passed in Execution Application No.10/2000 stands set aside. Since the execution application is of 2000, both the parties are directed to appear before the concerned Court on 20.11.2006 and the Executing Court is directed to expeditiously dispose of the application in accordance with law.

[Ajay Rastogi],J.

FRBOHRA,JR.P.A.